No. 10,989

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

JACOB MORRIS DANZIGER, TRINIDAD INTERNATIONAL PETROLEUM, LTD., and WAKE DEVELOPMENT COMPANY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S AMENDED AND SUPPLEMENTAL BRIEF.

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Jurisdictional Statement.

The United States District Court for the Southern District of California had jurisdiction of appellants and the subject matter and this Court has jurisdiction of the appeal.

Four classes of crime are pleaded in the Indictment:

A. Counts I to VII, inclusive, charge separate violations of Sec. 17 (a)(1), Securities Act of 1933: 15 United States Code 77q(a)(1).

B. Counts VIII to X, inclusive, charge separate violations of Sec. 5 (a)(2), Securities Act of 1933; 15 United

States Code, Sec. 77 (e)(2). (Defendants were acquitted as to these four counts.)

C. Counts XII to XVI, inclusive, charge separate violations of Section 215 Criminal Code, 18 United States Code 388. (Using Mails to Promote Fraud.)

D. Count XVII charges a violation of Title 18, United States Code, Section 88, in that defendants in the Central Division of the Southern District of California conspired to commit offenses against the United States by violating the aforesaid statutes; and that pursuant to said conspiracy, committed certain specified overt acts at Los Angeles, California. Each of the several counts of the Indictment allege that the offenses therein charged were committed in the Central Division of the Southern District of California.

E. Title 15, United States Code, Section 77v, conferred jurisdiction upon the District Court to try the defendants as to the offenses charged in Counts I to XI, inclusive.

F. Title 28, United States Code, Section 41 (2), conferred jurisdiction upon the District Court to try the defendants as to all of the offenses charged in the Indictment.

G. This Court has jurisdiction of the appeal under the provisions of Title 28, United States Code, Section 225 (a) and (d).

Statement of the Case.

On December 30, 1941, the Grand Jury returned the Indictment herein and it was filed that date. Appellants were thereafter arraigned, and having waived trial by jury, were tried before the Court without a jury. All appellants were adjudged guilty of the offenses charged in Counts I to VI (Sec. 17 (a)(1) Securities Act of 1933, Sec. 17 of (a)(1) Title 15, United States Code). They were acquitted as to Counts VIII to XI, inclusive; convicted as to Counts XII to XVI, inclusive (Mail Fraud), and as to Count XVII, conspiracy to commit the said substantive offenses.

Questions Involved in the Appeal.

Although presented in several forms, the appellants raise the following basic questions:

A. Is the Evidence Sufficient to Justify the Judgments of Conviction?

B. As to Count XVII, Is the Indictment Sufficient? (Appellant challenges it as "duplicitous, dis-associated, diverse and unrelated.")

C. Does the Transmittal of the Checks and Monies as Charged in Counts V, VI, XIII, XIV, XV and XVII Constitute a Use of the Mails Within the Prohibition of the Statute?

D. Did the Court Err in Denying Appellants' Motion to Dismiss the Indictment for Want of Prosecution?

E. Did the Court Err in Denying the Motion to Quash the Return of Service on the Corporate Defendants?

F. Did the Court Err in Appointing Danziger's Attorney to Represent the Corporate Defendants?

These subjects will be argued under the titles:

1. The Evidence Is Sufficient to Justify the Judgment of Conviction.

2. Evidence of Use of the Mails as Charged in Counts V, VI, XIII, XIV, XV and XVII Is Sufficient.

3. The Trial Court Did Not Err in Denying the Motion of Appellants to Dismiss the Indictment for Want of Prosecution, for a Continuance of the Trial, and to Quash the Return of Service on the Corporate Defendants Nor in Appointing Counsel to Represent the Corporate Defendants.

Statutes Involved in the Appeal.

Title 15, United States Code, Section 77q:

"*Fraudulent interstate transactions*

"(a) It shall be unlawful for any person in the sale of any securities by the use of any means or instruments or transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

"(1) to employ any device, scheme, or artifice to defraud, or

"(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

"(b) It shall be unlawful for any person, by the use of any means or instruments or transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, for an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

"(c) The exemptions provided in section 77c shall not apply to the provisions of this section. May 27, 1933, c. 38, Title I, §17, 48 Stat. 84."

Title 18, United States Code, Section 338:

"(*Criminal Code, section 215.*) *Using mails to promote frauds; counterfeit money.* Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is

commonly called the 'sawdust swindle,' or 'counterfeit-money fraud,' or by dealing or pretending to deal in what is commonly called 'green articles,' 'green coin,' 'green goods,' 'bills,' 'paper goods,' 'spurious Treasury notes,' 'United States goods,' 'green cigars,' or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than $1,000, or imprisoned not more than five years, or both. (R.S. §5480; Mar. 2, 1889, c. 393, §1, 25 Stat. 873; Mar. 4, 1909, c. 321, §215, 35 Stat. 1130.)"

Title 18, United States Code, Section 88:

"(*Criminal Code, section 37.*) *Conspiring to commit offense against the United States.* If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such

conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both. (R.S. §5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321, §37, 35 Stat. 1096.)"

The Facts.

Identity of Defendants.

TRINIDAD INTERNATIONAL PETROLEUM, LTD.

This defendant is a corporation organized under the laws of Nevada. [Exhibit 77 is its Minute Book. See also, Exhibit 80—certified copy of Articles of Incorporation.] Appellant Danziger was at all pertinent times president or chairman of the board. Of the million shares of stock issued by this corporation, 500,000 shares were returned to the treasury and 165,000 were issued to the Wake Development Company. Appellant Danziger has managed the affairs of the corporation ever since its formation. Trinidad International Petroleum, Ltd. has never sold any of its stock in the United States. The stock of this appellant sold in this country has been stock sold by the Wake Development Company out of the 165,000 shares which it received as a personal holding company for Danziger's wife. [Exhibit 92—testimony of appellant Danziger before the Securities and Exchange Commission.]

Upon its organization, Trinidad took over certain oil rights. These oil rights were owned by three persons in Trinidad, one Thomas Hill, one W. A. Gaskin, and one Allahar. They, in turn, had a lease contract with a concern called Standard Mining Company, a New York corporation, which was controlled by Mr. Hill. The Standard Mining Company made a contract with one

Herbert D. Rousse. This contract anticipated the formation of Trinidad and upon the incorporation of Trinidad, Rousse assigned the contract to this appellant. A copy of the contract between Standard Mining Company and Rousse is in evidence as Exhibit 81. The various original oil rights documents were claimed by appellant Danziger to have been turned over to an unidentified concern in London and are not in evidence. [Exhibit 92.] It was conceded by appellant Danziger at the trial that whatever interest Trinidad International Petroleum, Ltd. acquired in the oil rights originally belonging to Hill, Allahar and Gaskin, arose out of the contract, Exhibit 81. In Danziger's testimony before the Securities and Exchange Commission [Exhibit 92], he testified that he had gone to London several years ago to arrange financing for Trinidad, and that a concern there had interested itself in raising money abroad for the financing of the development of Trinidad's oil drilling rights. This arrangement was never consummated and the company has never become qualified to develop the properties in the Island of Trinidad. Beyond unsuccessfully endeavoring to obtain financing for the drilling of some wells under its contract, the corporation has never taken any steps toward qualifying itself to develop its properties.

Wake Development Company.

This appellant is a Delaware corporation. A certified copy of its Articles of Incorporation is in evidence as Exhibit 113. At all times pertinent to the case it had but one asset. This was originally a block of 165,000 shares of the capital stock of Trinidad International Petroleum, Ltd., which has since diminished by sales of stock to private investors. In Exhibit 92, which is the

Securities and Exchange Commission transcript of appellant Danziger's testimony, appellant Danziger stated that the theory of the integration of these two corporations was that the Standard Mining Company had received certain rights from the three above named original holders of oil rights, and that it turned those rights over to Rousse in exchange for 1,000,000 shares of Trinidad International Petroleum, Ltd. That 500,000 of said shares were returned to the Standard Mining Company which issued 335,000 to the original owners of the rights, Hill, Allahar and Gaskin, and 165,000 shares to Wake Development Company—which, in consideration of Danziger's promise to render services in the actual field operation of Trinidad International Petroleum, Ltd., were to be furnished to that firm. Appellant Danziger was at all times in charge of Wake Development Company. Except for a period from 1926 to 1939, Mrs. Danziger was the beneficial owner of Wake Development Company. During the interval mentioned, Alda Faulkner owned Wake Development Company. She was Danziger's right hand in the office of the Wake Development Company from about 1925 until her death in September, 1939.

Willard Eugene Warren.

This defendant was indicted as Warren C. Carter, and disclosed his true name when called as a witness. He is known by many aliases and employed the following in transactions referred to in the evidence: A. L. Roberts, George Carleton, W. E. Edwards, George Williams, and William Carmen. He is addressed in some of the Exhibits as "O.T.", an abbreviation of "Old Timer" which was appellant Danziger's manner of addressing him.

JACOB MORRIS DANZIGER.

This appellant is ordinarily referred to in the evidence under the name J. M. Danziger. In the transmittal of commissions to Warren, he sometimes used the alias A. Levy. See Exhibits 16 to 21 and the Record pages 420 to 447, which illustrate appellant Danziger's use of the alias A. Levy.

The Conspiracy and Scheme to Defraud.

Early in 1935 Appellant Danziger met defendant in New York City and sought his aid as a securities salesman in disposing of shares of stock in Trinidad International Petroleum, Ltd., to members of the public. [R. 1030.]

At that time Trinidad was a Nevada corporation. [Exhibits 77 and 80.] However, it was not proposing to sell its own stock in the United States. What Danziger proposed that Warren sell was a block of 165,000 shares of Trinidad which had been issued to Wake Development Company. This latter concern, a Delaware corporation [Exhibit 113] was a personal holding company of which Alda Faulkner was then reportedly the only beneficial owner. [Exhibit 92.] Mrs. Faulkner, a relative of Danziger by marriage, was his right hand in the office of Wake until her death in 1939.

At the time said proposal was made by Danziger to Warren, Trinidad had issued one million shares of stock. None had been sold in this country but 500,000 shares had been returned to the Treasury and from this 165,000 had been issued to Wake Development Company. The consideration for this transfer to Wake was an undertaking by Danziger to provide Trinidad with actual field manage-

ment of its affairs. Wake had no assets other than said 165,000 shares of Trinidad, and Trinidad in turn had nebulous assets consisting of a right to develop certain oil properties in the Island of Trinidad.[1] In Exhibit 92 Danziger testified the corporation had never become qualified to develop the properties in the Island of Trinidad although it made some effort in England through Danziger to sell some of its own stock there. [Exhibit 92.]

Said proposal to Warren was substantially that Warren and Danziger would compile literature which would refer to a permit which had been issued by Securities Division of the Federal Trade Commission (predecessor to the Securities and Exchange Commission) and that Warren would use the fact that such a permit had in fact been issued to Trinidad as a sales device in approaching prospects. [R. 1030-1032.] The sales, however, were not to

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[1]Upon its organization Trinidad took over certain rights. These oil rights were owned by three persons in Trinidad, one Thomas Hill, one W. A. Gaskin, and one Allahar. They, in turn, had a lease contract with a concern called Standard Mining Company, a New York corporation, which was controlled by Mr. Hill. The Standard Mining Company made a contract with one Herbert D. Rousse. This contract anticipated the formation of Trinidad and upon the incorporation of Trinidad, Rousse assigned the contract to this appellant. A copy of the contract between Standard Mining Company and Rousse is in evidence as Exhibit 81. The various original oil rights documents were claimed by appellant Danziger to have been turned over to an unidentified concern in London and are not in evidence. [Exhibit 92.] It was conceded by appellant Danziger at the trial that whatever interest Trinidad International Petroleum, Ltd. acquired in the oil rights originally belonging to Hill, Allahar and Gaskin, arose out of the contract, Exhibit 81. In Danziger's testimony before the Securities and Exchange Commission [Exhibit 92], he testified that he had gone to London several years ago to arrange financing for Trinidad, and that a concern there had interested itself in raising money abroad for the financing of the development of Trinidad's oil drilling rights.

be made from Trinidad's stock, but from the block of already issued Trinidad stock owned by Wake. In explaining the offering to Warren, Danziger told him that the stock of Trinidad authorized in the permit was not to be sold and that the permit was merely sales propaganda. [R. 1041-1042.]

It was to be Warren's duty to solicit persons who were the holders of various then worthless stocks in other unrelated concerns. These persons were to be offered an arrangement under which they could trade in such in fact worthless stocks as part payment for shares of Trinidad. [R. 1030-1031.] They were to be led to believe that they were dealing with Trinidad, through its fiscal agent, Wake. Danziger told Warren:

> "You are giving them the right to buy it (Trinidad stock) at $3.00 and giving a credit allowance of $2.00 on their stock, and, in addition to that, we are giving them one Preferential Profit-Sharing Note of one pound par value or denomination. We are giving them $10.00 worth of par value and they are only paying in $3.00 in cash * * * of course the stock we are selling them, so you will understand it clearly, is the personally owned stock of the Wake Development Company, but, * * * the public won't know the difference, and as far as that is concerned * * * we clear ourselves by specifically stating in here that 'No part of these issues will be offered to you.'" [R. 1041.]

Warren and Danziger had before them at that time Exhibit 97, a letter draft which Danziger was proposing be used in selling to prospects. The last paragraph of that letter said:

> "For the purpose of providing development funds, this company has received authority from the Federal Trade Commission at Washington, D. C., to offer to the public 200,000 shares of its Treasury stock at par, $5.00 per share. It is also making a similar offer in England. No part of these issues will be offered to you." [R. 1041.]

Warren testified as to their conversation at that time:

> At that time I was a little uncertain what he meant about this, and I asked him to explain. And he told me that he had registered 200,000 shares of stock with the Securities Division of the Federal Trade Commission, and had received a letter from them stating that he was permitted to sell the stock at $5.00 per share with a commission of 20 per cent allowed.
>
> I asked him if this was a part of the issue we were selling, and he said, "No, we are not offering that for sale."
>
> I said, "Well, why do you have it in this letter if it is not offered for sale?"
>
> He said, "That is to give you sales propaganda." He said, "You ought to be able to understand that." He says, "In other words, here the Commission has authorized this stock to be sold at $5.00 a share." He said, "On the South American Oil Field stockholders, you are giving them the right to buy it at $3.00 and giving a credit allowance of $2.00 on their stock, and, in addition to that we are giving them

> one Preferential Profit-Sharing Note of one pound par value or denomination. We are giving them $10.00 worth of par value and they are only paying in $3.00 in cash." "Of course," he said, "the stock we are selling them, so you will understand it correctly, is the personally owned stock of the Wake Development Company, but," he said, "the public won't know the difference, and as far as that is concerned," he says, "we clear ourselves by specifically stating in here that 'No part of these issues will be offered to you.'" [R. 1041-1043.][2]

Danziger told Warren that he was an attorney, that Warren did not have to worry, that he had been in the oil business a great many years and knew a great deal about such transactions, that he had been with Pan American Petroleum many years and had written a great many oil contracts for Mr. Doheny. [R. 1030-1049.]

Danziger then offered to divide the proceeds. Warren testified concerning this offer as follows:

> Yes, I asked him what arrangement we could make on the deal, what portion of the $3.00 that I collected would be mine, and how much he expected. And he said, "We will go 50-50. In other words, 50 per cent of the money that you take in. I am furnishing the names, and I will furnish the delivery of the stock; all you have to do is to make the sale and bring the sale to me." He told me to have the checks made payable to the Wake Development Company, which was his personally owned corporation, and he would make arrangements to send the checks by air mail

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[2]The writing on Exhibit 97 is Danziger's. [R. 1045.]

> to California, have them collected as quickly as possible, and wire the funds back so that he could pay me as soon after the collection as possible. I told him that was quite agreeable. [R. 1050.]

Danziger then gave Warren a list of names [R. 1049] but Warren found the list not a good one, partly because the parties named were disgusted with their prior investments and not disposed to invest further. [R. 1051.] At Danziger's suggestion, Warren brought him into contact with a Mr. De Hart who made an arrangement to turn over to Danziger a shareholder list of persons who held stock in Great Eastern Natural Gas Company, a dormant concern. [R. 1051.] A letter was worked out offering these shareholders a trade in value for their stock tied to an arrangement to pay additional money for Trinidad stock. [R. 1054-1061—Exhibits 100, 101.]

Exhibit 41 is a "build-up" letter sent to the shareholders of Great Eastern Natural Gas Company. This letter was worked out by Warren, Danziger and De Hart shortly before Danziger left for an extended stay in England. [R. 1062-1066.]

Danziger and Warren abandoned the original agreement under which Warren was to receive fifty per cent of the gross proceeds of sales and superseded it by a new arrangement, explained in the evidence by Warren as follows:

> The conversation took place in the Barbizon Plaza Hotel in the early part of 1935, as I have stated before. When I first brought Mr. De Hart to Mr. Danziger, I told him that after Mr. De Hart had had his first conversation with Mr. Danziger and he left, I told Mr. Danziger that there would have to be

another arrangement worked out between he and myself in respect to the financial arrangement as to the splitup of the commissions or the moneys that would be received from the sale of stock to the Great Eastern stockholders; and at that time we entered into an agreement whereby I would receive one-third commission and one-third for an expense allowance, with the understanding that I would pay all the expenses and the salesmen's commissions out of the two-thirds to be derived from the sale, or in terms of dollars, two dollars out of every three dollars we received was to go to me, out of which I was to pay all expenses and to pay the salesmen's commission and so forth. [R. 1067-1068.]

Danziger and Warren illustrated a total disregard of integrity in their method of approaching prospects by wilfully employing known corrupt salesmen.

This is demonstrated in Warren's testimony concerning their salesman, Franklin:

I told him that I thought I would be able to get together a crew of salesmen, that I had in mind certain men right then. And he said, "That's fine."

At a later date, somewhere along in, I believe now along in July of 1935, I brought to Mr. Danziger's room at the hotel a man by the name of Franklin.

Before I went up to see Mr. Danziger at the occasion of our interview, his and my interview, I left Franklin downstairs and proceeded upstairs to see Mr. Danziger. I told him I had in the lobby a man who I considered to be one of the best security salesmen in the business, but I told him that this man was a tough proposition to handle. I told him at the present time he is engaged in selling oil royalties out

of a firm down town by the name of Shearer & Company and, I said, I think he would be a good man on this deal, providing we could hold him into line.

He said, "Well, what do you mean by that?"

I said, "Well, he is known to make a lot of exaggerated statements, and he is not too careful about what he says about a deal."

Well, Mr. Danziger said, "I believe you can manage him all right, and I don't believe there is anything connected with this deal that a man could state very wrong. In fact, I don't worry about that; what I want to do is raise money right now, and it is up to you to get the money."

Well, I said, "I would like to introduce this fellow to you." So I went downstairs and I got Franklin and I brought him up. Franklin and myself and Danziger talked, and then we left. We started to sell the deal with about five salesmen. Franklin brought along one salesman by the name of Jack Beyers. [R. 1068-1070.]

Aliases were used in approaching the Great Eastern Natural Gas shareholders. Salesmen were given credentials (Exhibit 103 is one such document). Warren took his credential letter under the name "C. Cameron" and Danziger signed it "M. Bishop." [R. 1072—Exhibit 103.] The salesman Franklin used the name "Kramer." [R. 1074.]

It was arranged that the checks taken in from customers would be sent air mail to Los Angeles for collection through Wake; the funds for payment of Warren to be sent to New York for distribution. [R. 1074.]

Danziger went to England after the first sales in 1935 and returned to New York, arriving there September 20, 1937.

After Danziger went to England, Warren communicated with him. [R. 1090.] There had been sales of Trinidad stock prior to Danziger's departure, but none were made to Great Eastern Natural Gas shareholders after he left. [R. 1090.]

Danziger instructed Warren by mail [Exhibit 104] to have Wake letters sent to customers by Mrs. Faulkner in Wake's Los Angeles office. During Danziger's absence Warren wrote him that he was going to try to make some arrangement with a Canadian broker [R. 1091] and Danziger, after his return to Los Angeles, wrote to Warren that he would enter into any new arrangement along GE (Great Eastern) lines with anyone with a list and that there ought to be some Canadian broker who "would fall" for a deal to sell Trinidad stock. [Exhibit 95.] Warren did obtain other lists and did solicit shareholders in other companies, notably South McKenzie Island Mines [R. 1140] and Golden Quebec Mines.

The evidence in support of individual counts illustrates the scheme; its *modus operandi* and Danziger's active participation. Added to the foregoing, it proves the conspiracy to be one to sell worthless stock and undefined profit sharing notes to simple people; to misrepresent the stock and the company to them; and in some instances, to even lead them to believe that a ready market for the stock was in existence, and that if they would but acquire it they could sell at once profitably.

Evidence in Support of the Individual Counts.

Count One.

Count One of the Indictment is drawn to charge an offense under the Securities Act of 1933; 15 U. S. C. 77q (a)(1). Hereafter counts of the Indictment drawn under said Act will be referred to as Securities Acts counts.

In addition to the charges of fraudulent representations, it alleges that on or about May 15, 1940, defendants caused certain matter to be mailed from Los Angeles, California, to Mrs. Elizabeth Parsons, at Pottsville, Pennsylvania. (Mrs. Parsons did not testify.) The Record shows the following specific evidence as to this Count:

While Danziger was in England, sometime during 1936, Warren contacted Mrs. Elizabeth Parsons at Pottsville, Pennsylvania, and made a sale of Trinidad shares to her wherein he took in $500.00. A second sale grossed $3,000.00 and a third $4,000.00. [R. 1096.] Warren testified as to his dealings directly with Mrs. Parsons as follows:

> "The first sales that were made to Mrs. Parsons were made by me personally, the first three sales that were made were made by me personally. I sold the Trinidad International Petroleum stock by telling her that I had a connection with the Trinidad International Petroleum people, and that I represented their fiscal agent the Wake Development Company. I told her that my name was Edwards, and that as a result of my connections I was in a position to allow her to buy this security and to give her a certain number of shares of stock in that company. I showed her all of the literature which I had in my possession, which I had received previously on the Great Eastern deal,

to substantiate the fact that I did have some connection with the company. And at that time I wrote in detail to the Wake Development Company office, Alda Faulkner, and told them what I was doing. * * *

"I showed Mrs. Parsons a paper which I had received from London from Mr. Danziger, and I believe the name of the paper was The London Financial Times or News, or something like that, I don't remember the exact name, Mr. Danziger sent me quite a few papers from London, telling me that I would know how to use them in the sale of Trinidad. And I showed her a number of stocks in the oil list of this paper which had the name 'Trinidad' connected with them; one of them was 'Trinidad Apex,' the other one was 'Trinidad Leaseholds,' and the other one was—several other Trinidad stocks, and I told her that the company that I was selling her was headed by a former group of people of the Pan American Petroleum & Transport Company, and the Mexican Petroleum Company; that the stock had in former years a very high rating; that all of these men that were formerly connected with the Mexican Petroleum Company and the Pan American Petroleum & Transport Company were now directing their efforts toward the exploitation of oil in Trinidad, British West Indies, through this Trinidad International Petroleum Company; that the President of the company was now in England attending to the financing, large financial operations for the company; that I had personally been in touch with him numerous times; that I knew him personally and that I was doing certain work for the company; and that these shares which I was allowing her to buy was an inside

> arrangement, and the price she was getting would be considerably lower than what the stock could be sold for on the London securities market." [R. 1099-1102.]

He took in 3000 shares of Lamaque Contact gold stock and also some worthless shares of Golden Quebec Mines Limited. [R. 1102.] Warren communicated the sales to Wake at Los Angeles. [R. 1097.] Shortly before Danziger left England in 1937, Warren received a letter dated July 16, 1937, and signed "A. D. F." It was addressed to "My Dear Old Timer" and enclosed with it were copies of all correspondence had by Wake with Mrs. Parsons. A few days earlier Danziger sent a letter from London, addressed to George Carlton, Esq. (an alias of Warren), wherein he suggested that on his arrival in New York he would like to see the addressee who is identified in the salutation as "My Dear Old Timer." He went on to say, "possibly I can personally help with Parsons—or anyone else. I would commit murder to get over a nice sale * * *. The 'president' will be glad to call on Parsons and explain the encouraging results to date." He enclosed a copy of a build-up letter to Mrs. Parsons which he had written her from London. This correspondence is in evidence as Exhibit 105.

The foregoing relates the prelude to the specific sale to Mrs. Parsons which is the subject of Count One. Concerning the Count One transaction specifically, Warren testified:

> "When Mr. Danziger came back from England, or previous to the time that Mr. Danziger had come back from England, he had written me about his desire to put over a nice sale upon his return to New

York, and he further asked me if there wasn't something that I could do further in the Parsons matter; that he would be very willing to cooperate and help in any way that he could. So when he did come to New York, I brought the subject up that I had an arrangement to have a salesman call on Mrs. Parsons and make a sale. I told him that I had made so many visits to Mrs. Parsons during the course of several sales to her, that I had exhausted my own imagination to create any more sales talk, and that I figured that it was a good idea if I interjected a new personality into the picture.

"I told him I had found a man by the name of Joe Robbins, who I thought would be just the type of man that would appeal to Mrs. Parsons. I told him that we had talked it over and decided that Mr. Robbins would go up there and state that he was a direct representative of Mr. Danziger's from England, and that he represented a financial agent of Mr. Danziger's by the name of A. R. Winslow, and that Winslow had an option or controlled a selling group of a certain number of shares of stock, and that she could purchase a block of that stock, which would be considerably below what the stock was selling for in the English markets. As a matter of fact, we had some receipts made, printed, under the name of 'A. R. Winslow.'

"Then Mr. Robbins went up and made the sale and came back, there wasn't any definite amount set on, the idea was to make the sale for $10,000.00, but when Mr. Robbins came back he had a check for $7,000.00 made payable to A. R. Winslow, who was supposed to be a fiscal agent.

"There was no person by the name of A. R. Winslow to my knowledge." [R. 1103-1104.]

The specific matter pleaded in Count One as mailed to Mrs. Parsons is in evidence as a part of Exhibit 85. It is a covering letter used in the transmittal of Trinidad shares and request for signature of a note.

Danziger sent Warren copies of letters which he received from Mrs. Parsons and addressed notations thereon to "O. T." The name "Parsons" was written in code.

In original letters and office copies thereof the name "Parsons" was cut out of the letters. [See Exhibits 85-85A and 85B—Warren's testimony R. 1111-1117.].

COUNT TWO.

Count Two, a Securities Act count, after pleading by reference the same scheme and artifice to defraud, alleges the mailing of a letter to Mrs. Florence S. Lawyer, from Los Angeles to Yonkers, New York.

Mrs. Lawyer did not testify. Defendant Warren related his dealings with her substantially as follows:

> I called at her home in Yonkers and told her that I represented a Canadian concern, to the best of my recollection, and that I understood that as a stockholder of the Golden Quebec Mines Company she had exchanged the shares of the Golden Quebec into the Trinidad International Petroleum Company, who had made an offer to the Golden Quebec stockholders to exchange such shares. She told me, "Why, no, I haven't done anything like that." She said, "This is the first I ever knew about it."
>
> I said, "Well, that's surprising. I thought the Trinidad International Petroleum Company had made all the Golden Quebec stockholders aware of the fact that they would trade in the shares for Trinidad International Petroleum."

I proceeded to tell her a story about the Golden Quebec Mines Company going into receivership, and that the stockholders of the Golden Quebec Mines Company would probably or had received a certain right to exchange their shares, because a group of men that were interested in the Trinidad International Petroleum Company were interested in purchasing the properties that they owned in Canada. She said, well, she hadn't heard anything about it. I told her that the value of the stock was $5.00, its par value, and the notes could be sold around $4.80, which was equivalent to the par value of the pound sterling at that time; and that as a representative of the Sterling Securities Company in Toronto, I would like to buy the notes if she had them, but as long as she did not have them, well, the only thing I could suggest to her was to write to the Wake Development Company in Los Angeles and find out why they had never exchanged the notes—or the Golden Quebec Mines stock.

She told me that she certainly would do that by all means, and she thanked me very much for calling on her.

I am not positive, but I believe I used the name of Roberts.

That was the only visit, to the best of my recollection, that I had with Mrs. Lawyer. However, I did telephone her three or four times afterwards.

When I came back to New York, after my talk with Mrs. Lawyer, I wrote to the Wake Development Company in California and advised them that I had just contacted Mrs. Lawyer, and that they might receive an inquiry from her, and to send the regular offer that we had set up as a regular stipulated offer to Golden Quebec Mines stockholders, in the event they did get an inquiry from Mrs. Lawyer.

Then I wanted about six or seven days or so, a length of time I thought an air mail letter would go back and forth from California, and I called Mrs. Lawyer and asked her if she had heard. She told me on the first call that she hadn't received any reply from them as yet. I think this was about five or six days after I called her, and I said, "Well, that's funny, I wouldn't let it drag along too long. If you don't hear from them, I would be insistent and write again."

Then I received a letter from the Wake Development Company in which they sent me a copy of a letter that Mrs. Lawyer had sent them. To the best of my recollection Mrs. Lawyer went on to state that somebody had called on her from the Sterling Securities Company in Canada and stated that they wanted to buy her notes, and so forth, and she wanted to know why they had never issued the stock, and she wanted them to do something about it.

I immediately wrote back to Danziger and stated that under no circumstances should he make an offer to exchange her stock for her under the conditions of her letter, and I suggested that Mr. Danziger write her and tell her that he had had similar inquiries from other people about people offering them higher prices for the stock, and that he had no part of it, and therefore he could not make the exchange on the basis which she offered, and did not desire to do so.

I don't remember all of the letter, but I suggested certain things in the letter, partly which later I found Mr. Danziger had sent, because he sent me a copy of the letter which he wrote her, and then I called the woman again and she told me that she received a letter from them, and they frankly told her they

weren't going to do it, and what was it all about. And I said, "I can't understand why they would do that." I said, "Probably"—I said, "Have you got a copy of the letter you wrote them?"

And she said, "Yes, I have a kept a copy." She said, "I copy everything down."

I said, "Would you mind reading it to me over the telephone?" And she did.

And I said, "That is the reason. You started to talk about outside brokers purchasing the stock, and so forth, and that is one of the things that they don't want. You better write back and tell them that you accept it as a speculation, not with the stipulation as to some future performance or profit that would be performed in the future, or some expectation you had for selling the stock," and so forth. And she said, "All right."

Well, I again received a letter from Los Angeles, which the woman was a little milder—the woman stated practically the same thing, again, in a little different way, and I again wrote back air mail to Mr. Danziger and said that under no circumstances should he accept her exchange under the conditions she wanted to make it, because it would appear to be binding on Mr. Danziger, and I was looking out for his interest as well as my own, not having anything in evidence of that sort. To the best of my knowledge, this interchange of letters took place three or four times, and each time I received a copy from Mr. Danziger, and each time I told him he shouldn't accept the sale. Finally the woman did write to Mr. Danziger, she told me over the 'phone, I proceeded to call her several times during the course of this thing, she did write a letter, finally, stating she would accept the exchange strictly on the speculative merits

of the deal without any conditions to bind them, and so forth. And at the time I received that letter from Mr. Danziger, I said, "As long as you have this in evidence, you can accept the sale." [R. 1126-1131.]

On November 13, 1939, Danziger wrote Mrs. Lawyer the letter pleaded in Count Two. [Exhibit 56.] Danziger sent Warren a copy of it. Warren identified a written memorandum "original clear" which appears on said copy as being in Danziger's handwriting. [R. 1131-1132.] This copy is a part of Exhibit 56. Warren testified that the name "Florence Lawyer" and the street address had originally been on the copy but that he had cut that matter out. [R. 1132.] The letter assured Mrs. Lawyer that her shares and profit sharing notes would be forwarded to her.

Count Three.

Count Three is a Securities Act count, charging the same scheme and artifice to defraud. A specific letter is alleged to have been mailed by the defendants at Los Angeles, California, to one Harry F. Pitts, Kingston, New York. The letter is in evidence as a part of Exhibit 58. It invites Pitts to acquire Trinidad stock and details what he will have to pay in cash. Mr. Pitts did not testify.

Warren related the circumstances of his dealings with Mr. Pitts substantially as follows:

I asked him if he had received any offer from the Trinidad International Petroleum Company to exchange his Golden Quebec stock for stock and notes in the Trinidad Petroleum Company. I told him I represented some Canadian interests that were

interested in buying the notes of that company, and we were bidding $4.80 for the notes, and that the stock had a market of around $5.00, and that the rate of exchange that had been offered to them by the Wake Development Company and the Trinidad International Petroleum Company in California would, naturally, represent him a profit at those figures, and therefore I thought that he might be willing to sell if he had made the exchange. And he told me, "No, I haven't made any exchange. I didn't know anything about it until now."

And I said, "Well, it looks like you have been asleep at the switch, you better get busy and write to them and find out just what kind of an agreement they will go into with you, and if it is still on the basis that it was made originally, we might be able to do some business together."

And he said, "Well, that is awfully nice of you to tell me that." He said, "I will certainly write them right away and find out all about it." And he was a very sociable type of fellow, I remember him especially well because he took me in the back and bought me a drink, and then he and I left together and he drove me down the street; and I remember him especially because he told me there was a full moon out that night, and that was an omen of good luck, and he must have thought I was the good luck omen that came to tell him about this deal. That is why I remember Pitts very well. That is all there was to Pitts' deal.

Later on I went to New York and received a letter that he had written in about stock, and I wrote to Wake Development Company and told them to send the regular form letter that we had agreed upon, to make him the regular offer. Later I heard he had

sent in a check for the amount of shares he had; the amount of the shares I can't remember, but they were sent, and I was later sent my commission on the sale. [R. 1134-1135.]

Under date of January 19, 1939, a letter was mailed Mr. Pitts on the Wake letterhead, stating that his request to exchange 370 shares of Golden Quebec Mines stock for Trinidad stock was accepted; giving him a credit of 65¢ per share and accepting an additional payment in cash. The original letter is in evidence as a part of Exhibit 58. Warren identified it as bearing the signature of Alda Faulkner. This exhibit, so signed by Faulkner, should be read in the light of Exhibit 104, a letter from Danziger to Carmen [one of Warren's aliases R. 1321] wherein Danziger directed Warren to have all future letters go out from Los Angeles and stated that Faulkner would send them on his request.

Count Four.

Count Four is a Securities Act count relating to the same scheme and artifice to defraud and alleging the mailing of a certain letter at Los Angeles to F. A. Russell, Leominster, Massachusetts. The letter so pleaded is in evidence. [Exhibit 87.] The letter advises Russell that he must send in the stock which is to be traded and acknowledges receipt of money.

Mr. Russell did not testify.

Warren testified concerning his dealings with Russell, substantially as follows:

> While I was in Canada I obtained some names of South McKenzie Island Mines, I think that is the correct name.

Mr. Russell was on the list. I went into Mr. Russell's house and interviewed he and his wife in their living room. I told him that I understood that he owned some Trinidad International Petroleum notes, preferential profit-sharing notes, and that I represented those Canadian interests, we were interested in acquiring those notes and were willing to pay around $4.80, which was then the exchange rate for the pound sterling.

I asked him if he had any substantial amount of the notes, that I was interested in picking them up right away for the connection that I had. And he said, "Why, no, you must have it wrong."

And I said, "You are a stockholder in the South McKenzie Island Mines Company, aren't you?"

And he said, "Yes, I have a lot of that."

Well, I said, "How many shares do you have?" I think he mentioned he had quite a number of shares, 10,000, or 15,000 shares. And I said, "Well, evidently you have been left out in the rain, because you could have exchanged those shares of stock for the Trinidad International Petroleum stock and notes, and besides having a certain number of shares of the Trinidad International Petroleum Company, which would be extremely valuable, you would also have the notes which you could sell to me now."

He said, "Well, that is certainly news to me." He said, "How will I find out about this proposition?"

I proceeded to give him the name of the Wake Development Company who was the fiscal agent, as I understood it, the fiscal agent for the exchange, and I said if he proceeded to write to them he might be able to get some results.

He said, "Have you any suggested form that I should write to them?"

And I said, "No, I think you ought to be very specific." I said, "I think you ought to go right to bat on the thing." I said, "Instead of you writing out there direct and asking for an inquiry, I think you ought to make a proffer of a check along with your stock and insist that they exchange it. Tell them that you know how it can be exchanged."

The amount of money that the transaction was supposed to involve was around $3500.00, to the best of my recollection.

The arrangement for the exchange of stock as I had worked it out at that time would call for the shares of stock which he owned in the South McKenzie Mines plus $3500.00 in cash.

I can't remember exactly what the arrangement was, but he said, "Well, I wouldn't want to send them $3500.00 before I know that they would accept it." He said, "Don't you think it is better that I write them first and find out whether they will accept it?"

I said, "Well, I think that is a little weak." I said, "I tell you what you do. You make out a check for, say, 10 per cent, make a *bona fide* offer," I said, "So you will have something concrete, then they will either have to turn it down or return it to you." I said. "That will get you quick action."

So he said, "Well, that's a good idea, I think that is just what I will do, I will write out a check for $350.00 and I will send it right out there. Who will I make it payable to?"

And I said, "I imagine you should make it payable to the Wake Development Company, because they are the fiscal agents in the transfer office for the stock."

So he said he would do it.

I told him the Trinidad International Petroleum Limited was headed by a group of men who had been

formerly associated with Mr. E. L. Doheny in the enterprises of the Pan American Petroleum and Transport Company and Mexican Petroleum Company: that they had made large sums of money while associated with those enterprises; that during the time they had been with them they had acquired a group of properties in the British West Indies, namely, Trinidad, Port-au-Spain; that these properties had been put into the company, put into the Trinidad International Petroleum Company, after the properties that E. L. Doheny formerly controlled, namely, the Pan American Petroleum and Transport Company and Mexican Petroleum Company had been merged into the Standard Oil of Indiana—I think it was the Standard Oil of Indiana or New Jersey, if my memory doesn't fail me, I think it is Standard Oil of Indiana—and that now these men were expecting to do the same thing with the Trinidad International Petroleum that they had done with the Mexican Petroleum; that the Mexican Petroleum stock had sold as high as $400.00 a share on the stock exchange, and that the stock and notes of this company was traded both here in the Canadian markets and in London at around their par value, which was around $5.00 for the stock and $5.00 for the notes. That is about the extent of the story as I told it.

I had a paper with me at the time, and it was an English paper that I had for quite some time, and I showed him the various stocks and told him that this group was traded among that group, but I didn't designate which one.

I wrote them (Wake) right away after leaving, within the course of a day or so, and told them to expect a letter with a check in it from Mr. Russell for $350.00. I stated in my notation to the Wake

Development Company or Mr. Danziger, if he was there at the time, I stated in my letter that this was 10 per cent of the amount that they could expect to get after they signified their intention of making the exchange; that the $350.00 was only a 10 per cent deposit on a $3500.00 transaction.

In that letter that I sent to them I outlined the number of shares, how much credit they would receive for the shares and how many stocks and notes that I had worked out that the man would get.

I received a notification that the check had been received and had been placed in for collection. Later I received a telegram that they had received another telegram from Mr. Russell telling them to cancel the deal.

—after I had received this telegram advising me —at the Willard Hotel—as stated here, "Decided not interested in transfer of stock. Kindly return check as per letter. Unquote. Advise," I called Mr. Russell on the telephone and I endeavored to find out from him what had made him change his mind. But Mr. Russell acted very suspicious—

Mr. Russell answered very curtly. He didn't talk to me in the tone of voice, or in the same manner that he had upon the occasion of my first visit. In fact, he had so little to say to me over the 'phone that I had to nearly—make all the conversation myself.

After my conversation I wrote a letter to Mr. Danziger stating that I didn't know why he had changed his mind, but evidently something had happened to make him change his mind and, therefore, I would advise him to be guided accordingly, and it probably would be a good idea to issue him stock for the amount of money he paid in on the basis of which the deal had been outlined.

COUNT FIVE.

Count Five is a Securities Act count relating to the same scheme and artifice to defraud. The transmittal of a certain check by mail is pleaded. The transaction concerns a sale of Trinidad stock to Adeline B. Skinner.

Mrs. Skinner, age 73, at the time of the offense, resided in Manaquan, New Jersey.

She knew Warren as Mr. Edwards. [R. 547-548.]

In August, 1939, Warren called upon her. Always referring to him in her testimony by the name of Edwards, Miss Skinner testified substantially as follows:

> Using the name Edwards [R. 548] Warren called in person and stated that she, as an owner of Great Eastern Natural Gas probably still had a right to turn it into Trinidad for stock of that company; that Trinidad was listed on the London Stock Exchange [R. 553] and owned very valuable potential oil land in New Mexico. He advised her to write Wake and determine whether she could still avail herself of the offer to trade in her Great Eastern stock.
>
> He told her he would return after she had an opportunity to hear from the company [R. 555] and a few days later he telephoned her and she told him that Trinidad was disposed to treat the request favorably. [R. 555.]
>
> Warren told her that he was around buying the Trinidad notes. She inquired what he would pay for them and he told her three hundred fifty dollars, that they would cost her three hundred. [R. 558.]
>
> Some days later another man called on her [identified in Warren's testimony as Mike O'Brien, a confederate—R. 1155].

This man did not identify himself to her beyond stating that he represented the Trinidad Company. He told her the notes had a value of $500.00 and the stock had a value of sixteen to eighteen dollars per share. [R. 562.]

On September 12, 1939, she bought a cashier's check [Exhibit 38, R. 563] and transmitted it to Wake in the purchase of Trinidad stock and notes.

Warren, in testifying to the transaction with Miss Skinner, related his conversations with her substantially as follows:

I told her I represented some Canadian interests. I believe I told her I represented the Sterling Securities Company of Montreal, and I was interested in the purchase of some notes that I understood she owned in the Trinidad International Petroleum Company, and I wanted to know if she desired to sell them. And she said, "I don't have any notes in that company." And I said, "Well, that is very strange. According to the list of names I have, your name appears on it. Were you a stockholder in the Great Eastern Natural Gas Company that was the stock that was traded in for the Trinidad stock?"

And she said, "Oh, yes, I have some Great Eastern Natural Gas stock."

I asked her how many shares she had. And to the best of my memory, I think it was a hundred shares of stock. And she said, "Well, what would you suggest that I do?"

And I told her, I asked her if she had ever received any mail from the Trinidad company about offering an exchange, and she said, "Well, now, I don't know. I might have received something some

time back, but I don't remember of ever doing anything about it." She said, "Well, is this stock any good?"

And I said, "Yes, the Trinidad International Petroleum stock is good, but the Great Eastern Natural Gas stock doesn't have any market; and I think it would be a very good idea if you got in touch with these people. You say you have a letter?"

Then she said, "Well, I will look it up."

And I said, "Well, I know where they are located in Los Angeles, California, and they have a fiscal agent by the name of the Wake Development Company. They make all the transfers. Now, if you want the address I will be glad to give it to you. You communicate with them, and then at a later date I will come back and see you."

Then she asked me, "Well, does this stock have any value? Would there be any object in me making the exchange?"

And I said, "There certainly would, because the notes are worth about $4.80. I would be willing to pay that. The stock is worth around $5.00 a share. There you would have $10.00 worth of par value stock, and it would only cost you $3.00 to make the exchange, plus your old stock, and that would certainly bail you out regardless of what you paid for the Great Eastern stock."

And she said, "Well, that sounds very interesting to me, and I am very pleased to get the information and I shall write to them immediately."

I think at the time I had an English paper with me and I showed her quotations of various Trinidad stocks, oil stocks that were listed, and told her that this stock was traded among those stocks on the English markets.

I wrote a letter to the Wake Development Company and told them that I had made the call on Mrs. Skinner and they might expect an inquiry from her, and to answer her in the regular way as we had agreed previously to do on all inquiries of that type, and to advise me—

There had been a prescribed routine laid down between the Wake Development office, Mr. Danziger, Mrs. Faulkner, and myself, which we adhered to a certain procedure in regard to all of these calls, and after we had made a certain number of the calls and had worked out the plan we always wrote instructions in a very terse manner, stating, "Give them the regular answer, short form," or "long form," as we used to say. There were, in the beginning, two versions of the type of answers that were to be made. Some of them were short and some were a little longer, and I usually stated which answer they were to give, according to the circumstances of the call, and then it was established—then it was agreed that whenever an inquiry came in they sent me a copy, either the original letter—in the beginning I received a great many original letters, and then as time went on I received copies of the original letters on yellow sheets or second sheets, showing what they had received from the customer and what they had answered the customer, and then I would give any further instructions that I had at that time. That was all done by mail back and forth between New York and Los Angeles, or wherever I happened to be during my travels in making these calls. [R. 1151-1154.]

Warren then sent Mike O'Brien to see Miss Skinner. [R. 1155.] A week or so after O'Brien called on her, Warren received carbon copies of Exhibits 39, 40 and 41 which are letters between Miss Skinner and Wake where-

in the receipt of her payment is acknowledged and the issuance of Trinidad shares and notes to her discussed. Said carbon copies were sent to him by the Los Angeles office of Wake.

Warren received $200.00 less wiring charges as his part in the Skinner transaction. [R. 1161.] This count charges the use of the mail in collection of Miss Skinner's $300.00 check. The check is Exhibit 38.

Count Six.

Count Six is a Securities Act count relating to the same scheme and device to defraud. The transmission through United States Mails of a certain check is pleaded. It is alleged that the mails were used in connection with a sale of Securities to E. Barrie Smith. Specifically, appellants are accused of transmitting Smith's $195.00 check through the mail for collection. The check is Exhibit 59.

Warren testified in substance concerning his dealings with Smith as follows:

> I asked E. Barrie Smith if he had any Trinidad preferential profit-sharing notes. He said to me, "Why, no. Why do you ask me that?"
>
> I said, "Well, I had your name on a list here as being a possible owner of the notes of that company, and I represent some Canadian interests who are interested in buying the notes."
>
> And he said, "No, I never heard of it."
>
> I said, "Well, do you own any other Canadian securities, principally Golden Quebec Mines Limited?"
>
> He said, "Yes, come to think about it, I do own some shares in that."

I knew ahead of time how many shares he had, but I asked him to tell me how many shares he had, and he answered a certain number of shares, and he said, "What has that to do with it?" And I said, "You can exchange those shares for Trinidad International Petroleum stock and notes if you will write to the company in Los Angeles and tell them that you own the securities and that you have never been made aware of the rights to exchange it, or any offer ever having been made to you previously."

He said, "Well, why would I get stock in an oil company for gold mining stock?"

And I stated to him that the properties of the Golden Quebec Mines Limited were being sold in a receivership proceedings, and that my understanding was some men interested in oil properties were going into the gold business in Canada and were buying up the properties out of receivership, and because there were certain difficulties between the stockholders and the committees for the receivers, that they had made an arrangement whereby the owners of the Trinidad oil stocks were going to allow them to buy some shares in this company for any equity that they might have had in the old Golden Quebec properties. And he said it was the first he had ever known about it, but he would write out there and see if he couldn't exchange his shares. And that was about all the conversation I had with him, and he said, "Well, will I hear from you again?" And I said, "Yes, I will get in touch with you probably in a couple of weeks and see if you have the notes, and at that time we can do some business."

I did communicate with the Wake Development Company on that call and told them the circumstances of my call, briefly, stating that I had made a call and

they would receive an inquiry, and to answer them in the regular form letter that we had arranged previously to answer on all inquiries from stockholders of the Golden Quebec Mines Limited. [R. 1162-1164.]

Count Twelve.

Count Twelve is drawn to charge the offense prohibited by Title 18, Section 338, United States Code, and describes the offense commonly known as Mail Fraud.

It charges the same scheme and artifice alleged in Count One and refers to the mailing of a specific letter from Los Angeles to J. Arthur Hazelton, Mantua, New Jersey.

There was a long course of dealing between the appellants, Warner and Hazelton, and the letter described in the Indictment was mailed after the victim had been induced to make his first payments, and in the furtherance of the scheme to obtain further money from him. To place this letter [Ex. 34] in its proper perspective, it is necessary to relate the entire history of the Hazelton transaction.

Hazelton knew Warren as A. L. Roberts.

Hazelton owned 300 shares of Martin Custom Tire stock. This concern was in bankruptcy. Using the name A. L. Roberts, Warren telephoned Hazelton and offered to give the stock substantial value in a trade for Trinidad stock and profit-sharing notes. [R. 452.]

After preliminary telephone conversations, Warren called on Hazelton in June, 1938, and told him Trinidad International Petroleum stock was listed on the London Exchange. [R. 454.]

The Trinidad stock was available to Hazelton in a combination of one share of stock and one profit-sharing note. The unit value was fixed as eight dollars.

Hazelton bought seven hundred units of Trinidad through Warren.

He sold $3,743.57 worth of shares in other companies in order to finance the purchase. [Ex. 23, R. 465.] At that time Warren told him that the Trinidad units were listed on the London Stock Exchange and that Trinidad had oil producing properties on the Island of Trinidad.

There was a great deal of correspondence between Wake and Hazelton, accumulated as Exhibit 24. It shows appellant Danziger participating directly in the transaction. The last page of Exhibit 24 is a letter from Danziger to Hazelton informing him of sales of Trinidad notes at prices indicative of substantial value.

Directly concerning Exhibit 34, the letter complained of in Count Twelve, Hazelton testified that Warren called on him in March of 1940 and represented that

> "they were going to form a syndicate to dispose of the profit sharing notes and the stock; and it was to include 1200 units all told. At that time he said he had to personally contact the parties in California, and then from there he had to come back to New York, and then he was going to Miami, and then to Trinidad to confirm the sale which was supposed to have a deadline, provided he got these 1200 units together. The value that he placed upon it at that time was approximately thirteen dollars and a half. That was to include one share of stock and one unit. One was not to be good without the other. [R. 488-489.]

"He said he had to make personal contact himself. He was short on funds and it would take seven or eight hundred dollars. It was finally agreed that I advance him the money to finance the trip. [R. 489.]

"He said that this deal had to be transacted through parties in California, namely, the Wake Development Company, and he was to fly there to complete the deal, and he said it would be a hard matter to pick up the profit sharing notes, to combine with the stock certificate, and one wouldn't be acceptable without the other, to conclude that 1200 unit deal. [R. 493, 494.]

"He said that this group had been willing to accept an offer of thirteen dollars and a half or seventy or seventy-one shillings in English money, from a Mr. Stanley who was supposed to be representing the English interest.

"That was to be the price paid per unit, one share of stock and one of note.

"He said while he was in California he had contacted members of this Wake Company, mentioning Mr. Danziger, and they were connected with the Doheny interests, and they were more or less involved a great deal in selling oil, and they could dispose of it that way, and he had several connections, that was the reason he would be offered to put in this block of 1200 units of stock, which this syndicate was selling to the British interests through a Mr. Stanley. [R. 500, 501.]

Hazelton was to derive $9895.00 as his share of the sale to Mr. Stanley. [R. 502.]

Hazelton sent a $300.00 cashier's check to Wake in care of Roberts. [R. 491, Ex. 29.] He also sent four Postal Money Orders for $100.00 each. [R. 491.]

Thereafter he received Exhibit 34 through the mail. This is the letter described in Count Twelve. It was post-marked "Los Angeles." The letter was purportedly written in Los Angeles and described Warren's plans (under the alias Roberts) to return to New York and "leave for the properties." It asked for another $100.00 and stated that after such payment, Hazelton would owe $225.00. It is clearly a letter designed to nurture confidence and obtain the additional money requested.

Warren did not go to Los Angeles, nor to Trinidad. He rounded out the story of the letter, Exhibit 34, substantially as follows:

> I called Dr. Hazelton on the telephone from New York and told him I was going to visit him because I had a matter I wanted to talk over with him. And in a few days I went down to see Dr. Hazelton in Mantua, New Jersey.
>
> I explained to Dr. Hazelton that the stock of the Trinidad International Petroleum had not gone up as high in price as I had anticipated during the two years or a year and a half interim that I had sold him his previous stock or had been instrumental in getting him to acquire his holdings in the company, but that I had every reason to believe that soon there would be a deal culminated whereby a certain number of shares of stock would be taken up by a syndicate group. I told him that his holdings in the company were not adequate enough to entitle him to participate in that sale, so I told him that I wanted to increase his holdings in the company by an additional thousand shares of stock. He very frankly told me that he could not think of such a thing; that it was beyond his ability to furnish any more funds, and he told me that he didn't have any more securities. He showed me some royalties that he had

bought since I sold him the last time, amounting to $2500.00, stating that that was the last money he had, and he couldn't put in any money. I then asked him if he couldn't put in a smaller amount, and he reiterated what he said, he just simply was strapped, he had no more money to put into anything and he couldn't go any further.

At that time I told him that I was contemplating a trip to Los Angeles, and that from Los Angeles I was coming back to New York, and that I was going down to Trinidad to work on this arrangement whereby we were going to dispose of the stock; that I would take care of him in some manner, shape or form, regardless of whether his holdings were large enough to warrant his participation in the syndicate. He said, well, that would be fine, he hoped I would take care of it. And I said, "Of course, the expense of this trip is going to be considerable. It is going to run into a great deal of money, and I would like to have you underwrite a part of that cost." He said, Well, he would try to do what he could. And then I pinned him down and he said, "The most I could advance toward that expense would be $300.00." Then I told him that wouldn't be sufficient, that the least I could accept would be a thousand dollars. We finally arrived at $700.00 as the basis, but I would have to wait for the balance of the $400.00. At that time I agreed that he should be entitled to receive another hundred shares of stock for the money that he would advance toward this expense, and, namely, would transfer 100 shares of the stock that he had in my name and was holding for me, in consideration for this money.

He told me he didn't have the money right then and there, and asked me where he could mail it to. I told him he could mail the check out to the Wake

Development Company in Los Angeles in care of A. L. Roberts, and that I would receive it when I arrived out there. Then I left. I wrote to Mr. Danziger and told him he would receive a check, that I had been unsuccessful in getting any more than $300.00 out of Mr. Hazelton, and explained to him that when the check came through that he could either cash it or re-forward it to me and I would cash it.

I later received a letter from Los Angeles stating they had received the check for $300.00 and had put the check in for collection, and after the check had cleared they would send me the usual $200.00, less wiring charges.

I later did receive the money. [R. 1205-1208.]

Warren then identified Exhibit 34 as his letter. [R. 1209.] He explained the peculiar circumstances of his presence in New York and the mailing of the letter in Los Angeles in this language:

"I wrote this letter to Dr. Hazelton and mailed it out to Los Angeles, California, to Mr. Danziger, and asked him to re-mail the letter to Dr. Hazelton so as to reflect the fact that I was in Los Angeles." [R. 1209.]

Count Thirteen.

Count Thirteen is a mail fraud count. The theory of this charge is that defendant Warren induced Hazelton, as is reflected in the evidence summary of Count Twelve, to pay in certain sums of money for travel expense, and to agree to pay in more, all on the representation that Warren was doing certain work in his behalf, necessitating travel to California from New York and on to Trini-

dad. The travel was represented as incidental to getting Hazelton's Trinidad stock included in a pool of stock and profit-sharing notes to be sold to a Mr. Stanley. Actually there was no travel to be done; no sale in contemplation to Stanley.

Dr. Hazelton sent a cashier's check for $300.00 to Wake. [R. 491.] It is the use of the mails in the collection of this check which is prosecuted in Count Thirteen. The check is definitely identified at R. 489 as the same one referred to in the indictment. See Exhibit 29.

Warren testified at R. 1208 that he received a letter from Wake to the effect that they had received the check and placed it for collection; that after it cleared he would be sent $200.00. He testified at R. 1209 that he wrote Danziger and enlisted his active aid in perpetrating the fiction on Hazelton.

The bank representative at Los Angeles produced Exhibit 3, the collection record of Bank of America, with respect to the collection of the same cashier's check. It was transmitted to the Philadelphia National Bank in Philadelphia, Pennsylvania, and was paid whereon the $300.00 collected was credited to the account of Wake Development Company. [R. 398.] Exhibit 92 is a transcript of Danziger's testimony before the Securities and Exchange Commission. It is in evidence as an admission of said appellant. In it, Danziger admits total management and control of Wake Development Company. Alda Faulkner, his sister-in-law whom he described as his right hand in the office, died in 1939. She had no suc-

cessor in authority. Danziger himself was the responsible man in the office at all times and the only one to exercise discretion after the death of Mrs. Faulkner. Hence, the banking of the cashier's check, concurrent as it was with Danziger's cooperation in mailing the fraudulent letter [Ex. 34] is brought directly home to Danziger.

Count Fourteen.

Count Fourteen presents another facet of the transaction involved in Count Two. It is drawn under the mail fraud statute, and repleads the scheme and artifice to defraud which is detailed in Count One. Count Two charges a transmittal in the mail of a certain letter to the victim, Florence S. Lawyer. That letter acknowledged receipt of a check for $390.00 from Mrs. Lawyer. In Count Fourteen defendants are prosecuted for having caused that check to be deposited in the United States Post Office at Los Angeles to be delivered by mail to the Bank of Manhattan Company, New York.

Reference is here made to the treatment of Count Two for an exposition of the evidence upon the subject of the artifice which made the mailing of the letter unlawful. Necessarily, the same taint applies to the use of the mail in collection of the fruits of the crime as charged in Count Two.

Count Fourteen is further specifically supported by proof of the transmittal of the check.

Exhibit 13 consists of the check together with the collection record of the Bank of America in Los Angeles.

It shows that the Los Angeles Bank received the check for collection and transmitted it to New York for collection; that this was done at the instance of Wake (which operated under the personal management of Danziger), and that upon collection of the check it was credited to Wake.

Count Fifteen.

There is a hiatus in the evidence as to Count Fifteen. The check, transmittal of which is proved, is not identified to the fraudulent transaction. Accordingly, error is confessed as to Count Fifteen.

Count Sixteen.

Count Sixteen is a mail fraud count related to the scheme and artifice described in Count One. The communication described in Count Sixteen acknowledges receipt by Wake of the check referred to in Count Six. The envelope showing transmittal by United States mail, together with the letter described in Count Sixteen, is in evidence. [Exhibit 59.] It was stipulated that the signature is genuine.

Count Seventeen.

The evidence heretofore summarized applies in its entirety to Count Seventeen which charges that the appellants, together with defendant Warren (named therein as Carter) and others conspired to commit offenses against the United States. It particularizes that they conspired to commit the substantive offenses charged in the preceding counts.

In addition to the foregoing evidence, the Record shows extended correspondence between Danziger and Warren, wherein Danziger supplied Warren with copies of correspondence received from the victims above named; all so that Warren would be guided in his dealings with said victims by his knowledge of their direct correspondence with Danziger. Warren in turn kept Danziger advised as to what approach should be made to the victims in letters to be written them by Danziger. See Exhibits 56, 57, 58, 59, 71, 85A, 85B, 105 and 106 for illustrations of the Warren-Danziger correspondence of this type. At R. 1242 Warren testified that there was a continuous correspondence between himself and Danziger down to the time he, Warren, ceased working on the deal.

The system of supplying each other with copies of correspondence and advices was implimented by use of a code when the names of victims were used. This practice was explained by Warren at R. 1113 as follows:

> "During my communications with Mr. Danziger, at one period I suggested we use a code so as not to disclose the identity of people's names or prospect's names that might appear in telegrams that we sent backwards and forwards a great deal during our negotiations. The first code used was the entire alphabet, substituting the second letter for 'A' or the third letter for 'A,' I don't remember exactly which, but it was in one of those orders. And then after we had used that for some time, because of its difficulty in working it all out, Mr. Danziger wrote me a letter and suggested that he had a better plan, that he would

take a series of code words from the International code book, or some code book that he had, and send them to me, and then I could set up alongside of the codes the various phrases which I would most frequently use in contacting him, and they would represent those phrases. Later we decided that we would also use those code words to designate a certain name, especially where we had occasion to refer to that name more than once."

Danziger frequently used the name A. Faulkner and signed letters to the victims under that name. Exhibit 85B, for instance, contains a copy of a letter written under date of November 2, 1937, to Mrs. Parsons. At R. 1114 and 1115, Warren identified the signature as having been written by Danziger; and admitted that he (Warren) had cut out the name of the addressee from the copy of the letter, so that the identity of the addressee would not be revealed. In the same Exhibit 85-B, is a memorandum from Danziger in which Mrs. Parsons is referred to by the code symbol "NYPQMLQ." [R. 1114.]

The subterfuge was, of course, designed to protect the appellants from an accumulation of documentary evidence.

Exhibit 92 conclusively shows Danziger back of the scene management of the fraud. It admits the facts which establish that Wake and Trinidad were not the substantial concerns represented. It admits that Danziger controlled them. It denies only that Danziger knew Warren by his aliases or addressed him as "OT" or Old Timer.

ARGUMENT.

It is evident from the foregoing facts that appellant Danziger, the corporate appellants, defendant Warren and other persons engaged in an enterprise to foist a worthless stock upon members of the public. Reference to Exhibit 92, which consists of appellant Danziger's testimony before the Securities and Exchange Commission, demonstrates that there was no real substance to Trinidad International Petroleum, Ltd., and that Wake Development Company, instead of being the fiscal agent of a large and succesful oil producing concern, was but a personal holding company for a relative of Danziger's and that appellant Danziger dominated and controlled the corporations. The entire tenor of the representations made to the victims was such as to lead them to believe either that they were in a select group of persons who were entitled to acquire Trinidad stock and that if they would only acquire it, they could immediately dispose of it at either a substantial profit or one sufficient to wipe out a loss which they had suffered in a prior unfortunate investment; or that they were acquiring stock by way of investment directly into the capital of a large and successful enterprise actually engaged in oil production. Manifestly there was no true market for the Trinidad stock and so-called Profit-Sharing Notes. Victims were induced to acquire the stock believing that Warren, under some one of his aliases, would return and take it off their hands at a substantial profit, whereas in truth there was never an intent to do so. Other victims were induced to purchase the stock believing that their investment added to the capital of the company whereas in fact they were not investing in Trinidad at all but were merely purchasing

the privately owned stock of the Wake Development Company and, instead of finding its way into the treasury of Trinidad, the purchase money found its way only to appellant Danziger, defendant Warren, and their confederates. In the same conversation wherein Danziger apprised Warren that the shares to be sold were not subject to the Securities and Exchange Commission's jurisdiction, he provided Warren with sales material which was cleverly designed to lead the purchaser to believe that the Securities and Exchange Commission was exercising a jurisdiction over the sale of the stock.

From Exhibits 77, 80, 81, 82 and 92, it is apparent that when defendant Warren and appellant Danziger first met in New York in 1935 [R. 1027] Trinidad International Petroleum, Ltd., was not a going business and had as its only assets certain nebulous rights to qualify to promote oil properties in the Island of Trinidad. Wake Development Company was only a holding company in which appellant Danziger's wife owned the beneficial interest. Its only asset was stock of Trinidad International Petroleum, Ltd., which it had acquired in exchange for a promise of services to be rendered by Danziger in the conduct of its affairs. Danziger dominated both corporations. He had formerly been associated with large and successful oil companies but neither Wake Development Company nor Trinidad International Petroleum, Ltd., had anything to offer except that Trinidad did have a right to develop certain oil properties. Wake Development Company was not its fiscal agent and was only interested in liquidating its own holdings in Trinidad International Petroleum, Ltd. In Warren's first meeting with Danziger he was told that Danziger had a deal not subject to any regulations by the Securities and Exchange Act [R. 1295],

that Danziger was a lawyer, and that all the stock to be sold was issued out of the treasury to the Wake Development Company and was a personally owned stock of the Wake Devlopment Company and, therefore, exempt from the Securities and Exchange Act. [R. 1297.] At the outset Danziger gave Warren Exhibit 97, which referred to a permit which Trinidad International Petroleum, Ltd., had received from the Federal Trade Commission to offer to the public 200,000 shares of its treasury stock. [R. 1041.] This exhibit was a proposed letter to be sent out to prospects. Asked by Warren whether these shares authorized by the Securities Division Federal Trade Commission (predecessor to the Securities and Exchange Commission) were what he was to sell, Danziger replied, "No, we are not offering that for sale . . . that is to give you sales propaganda . . . you ought to be able to understand that." Danziger had proposed to Warren that Warren solicit persons who were the holders of various stocks which were worthless (admitted to be worthless by Danziger in Exhibit 92) and to induce those persons to purchase Trinidad International Petroleum, Ltd., stock under the impression that they were dealing with Trinidad International Petroleum, Ltd., through Wake Development Company, its fiscal agent, and were paying in part for that stock with their previously acquired but now worthless stocks of other companies. In commenting on this in his first conversations with Warren, Danziger said [R. 1041]:

> "You are giving them the right to buy it at $3.00 and giving a credit allowance of $2.00 on their stock, and, in addition to that, we are giving them one Preferential Profit-Sharing Note of one pound par value or denomination. We are giving them $10.00

> worth of par value and they are only paying in $3.00 in cash . . . of course the stock we are selling them, so you will understand it clearly, is the personally owned stock of the Wake Development Company, but, . . . the public won't know the difference, and as far as that is concerned . . . we clear ourselves by specifically stating in here that no part of these issues will be offered to you."

Danziger at that time supplied Warren with a list of persons who had stock in certain inactive companies and [R. 1051] made an arrangement in which Warren quoted him as follows:

> "We will go 50-50. In other words, 50% of the money that you take in. I am furnishing the names, and I will furnish the delivery of the stock; all you have to do is make the sale and bring the sale to me."

When Warren found the persons on Danziger's list unresponsive, Danziger asked him to work up an arrangement and Warren proposed working on the shareholders of the Great Eastern Natural Gas Company. After a plan for accomplishing this had been formulated, Warren told Danziger that There would have to be another arrangement worked out between them as to the split up of the commissions, that he Warren, would receive one-third as a commission and one-third for expenses with the understanding that he would pay salesmen's commissions out of the money received by him and that Danziger would receive one-third. [R. 1067.] Warren then told Danziger that he had a salesman whom he considered one of the best security salesmen in the business but that he was a tough proposition to handle,

that he was known to make a lot of exaggerated statements and to not be too careful in what he said about a deal. Danziger replied that he wouldn't worry about that, that what he wanted was to raise money immediately. [R. 1069.] This man, whose true name was Franklin, used an alias in approaching his prospects. [R. 1074.] From that point on holders of shares in Great Eastern Natural Gas Corporation and the Golden Quebec Mining Company were solicited by Warren and his confederates. Warren employed two separate sales techniques. The first one was to contact the prospect and inquire whether he had taken advantage of the offer which had been made to turn in his Great Eastern Natural Gas Company stock in exchange for Trinidad International Petroleum, Ltd. stock. The prospect usually replied that he had not heard of such an offer and was then advised by Warren to write in to the Wake Development Company, which was the fiscal agent of Trinidad, and inquire about it as the stock of Trinidad was selling at par and the prospects were that the company was going to make considerable money. The Wake Development Company replied to the inquiry from the prospects in a negative fashion indicating that the time for a transfer of stock was past. Finally Wake would yield and the transfer would be accomplished, the stock being taken in together with additional monies. These monies were then divided, two-thirds to Warren and one-third to Danziger. In Exhibit 92 there is a statement by Danziger that the stocks which were traded in are still in the office of the Wake Development Company and are believed to have no value.

The second method of operation employed the device of Warren calling upon a prospect, usually one holding stock in Golden Quebec Mines, and asserting that he

understood that the party was the owner of Trinidad stock, that he represented a Canadian firm which was interested in acquiring the Trinidad stock. The prospect, of course, had no Trinidad stock. Warren then explained to the prospect that there had been an arrangement by which the Golden Quebec stock was at one time transferable for Trinidad stock and that if the prospect were able to work out such a transfer with the Wake Development Company, Trinidad's fiscal agent, he would, on behalf of his Canadian principals, be glad to purchase the Trinidad stock as his people were interested in acquiring it at a quoted price. Warren kept the office of Wake advised concerning prospects who might be expected to write in in this regard. Wake would finally grant the transfer privilege to the prospects and transmit Warren's share of the proceeds to him. However, Warren always failed to return to purchase the stock for his purported Canadian principal. In these transactions Warren used aliases and appellant Danziger makes considerable point that he did not know that he was dealing with Warren and that Warren's sales methods were individual pecadillos of the salesmen done without the knowledge, consent or connivance of Danziger. However, the Record shows that during this period Danziger was in constant touch with Warren, addressing him as "O.T.". Records which Danziger submitted to the Securities and Exchange Commission and identified by Warren as written in his own handwriting, address Danziger as "My dear Mr. Danziger" and called attention to prospective transactions which ripened into Counts I and XV of the Indictment. A reading of the Record from page 1111 and of Exhibits 56, 57, 58, 59, 85a, 85b, 105 and 106, indicate a course of communication between

Warren and Danziger which refutes conclusively Danziger's contention that he did not know Warren's method of operation or identity. In this connection it is noteworthy that in Exhibit 92, a transcript of Danziger's testimony before the Securities and Exchange Commission, Danziger recognizing the serious incrimination which reposed in an acknowledgment that he understandingly transacted business with "O.T.", made an emphatic denial of having done so.

This entire course of dealing discloses a conventional stock sale fraud of the type recognized and redressed in such old land-mark cases as *Myers v. United States,* 223 Fed. 919 (C. C. A. 2, 1915), and *Wilson v. United States,* 190 Fed. 427 (C. C. A. 2 1911). See also, *Kaplan v. United States,* 18 F. (2d) 939 (C. C. A. 2, 1927); *Butler v. United States,* 53 F. (2d) 800 (C. C. A. 10, 1931); *Stone v. United States,* 113 F. (2d) 70 (C. C. A. 6, 1940), and *Landay v. United States,* 108 F. (2d) 698 (C. C. A. 6, 1939); *Lonergan v. United States,* 95 F. (2d) 642 (C. C. A. 9, 1938); *Greenbaum v. United States,* 80 F. (2d) 113, 125 (C. C. A. 9, 1935).

Title 18, United States Code, Section 550, robs appellant Danziger of his contention that Warren was the principal. It is apparent that the actual principal in all of the crimes was Danziger and that the corporate defendants and Warren were his confederates. However, even if Warren were the principal offender as Danziger contends,

the clear language of said Code Section binds Danziger to Warren's acts:

> "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

This case is also one in which the following quotation from *Henderson v. United States,* 143 F. (2d) 681, seems most appropriate:

> "It is a familiar principle, which it is our duty to apply, that an appellate court will indulge all reasonable presumptions in support of the rulings of a trial court and therefore that it will draw all inferences permissible from the record, and in determining whether evidence is sufficient to sustain a conviction, will consider the evidence most favorably to the prosecution, United States v. Manton, 2 Cir., 107 F. (2d) 834, 839; Shannabarger v. United States, 8 Cir., 99 F. (2d) 957, 961; Borgia v. United States, 9 Cir., 78 F. (2d) 550, 555. With this principle in mind we come directly to appellant's claim that we should declare that the jury's verdict of guilty cannot stand.
>
> ". . .
>
> "The proof in a criminal case need not exclude all doubt. If that were the rule, crime would be punished only by the criminal's own conscience, and organized society would be without defense against the conscienceless criminal and against the weak, the cowardly and the lazy who would seek to live on their wits. The proof need go no further than reach that

degree of probability where the general experience of men suggests that it has passed the mark of reasonable doubt.

"And judges and juries do not begin the solution of the complex problems presented to them from a zero of knowledge. They start with the vast common knowledge and understanding possessed by the people. Applying such common knowledge and understanding to the evidence in this case, can there be the slightest doubt about the essentials of this case!"

The scheme is set forth in Count I of the Indictment. The whole evidence goes to show the existence of the scheme and of the conspiracy charged in Count XVII. Each of the substantive Counts contains a *haec verba* copy of a document alleged to have been transmitted in violation as to Counts I to VI of the Securities Act of 1933, and as to Counts XII to XVI of the Mail Fraud Statute, Title 15, United States Code, 338. The several documents so pleaded are in evidence as follows:

Count I	Exhibit 85
Count II	Exhibit 56
Count III	Exhibit 58
Count IV	Exhibit 87
Count V	Exhibit 38
Count VI	Exhibit 59
Count XII	Exhibit 34
Count XIII	Exhibit 29
Count XIV	Exhibit 13
Count XV	Exhibit 9
Count XVI	Exhibit 59

Evidence of Use of the Mails as Charged in Counts V, VI, XIII, XIV, XV and XVII Is Sufficient.

The third point argued in appellants' brief is that proof is lacking that the mailing of the matters referred to in Counts V, VI, XIII, XIV, XV and XVII was for the purpose of executing the fraud.

The one case cited for this proposition does not square with the evidence in this case and does not assist appellants. *Kann v. United States,* 323 U. S. 88, concerned a situation wherein there was no use of the mails in the execution of the fraudulent scheme. The defendants deposited the fraudulently obtained check in that case and were given immediate credit. They reaped the fruit of the fraud when the check was credited to their account. The Court held that the subsequent use of the mails by the bank was not in execution of the depositors fraud.

Count V (Securities Act violation) concerns a check drawn on the First National Bank at Farmingdale, New Jersey. A Bank of America employee from the Fourth and Spring Branch, Los Angeles, produced that bank's collection record [Exhibit 5] concerning the check [Exhibit 38]. The check was endorsed by Wake Development Company. It was handled as a collection item and was paid.

Exhibits 2 to 14, inclusive, are further checks and notes including those pleaded in the Indictment, and Bank of America collection records concerning them, all showing that in the Counts referred to by appellants, and in other similar transactions the checks and notes, drawn on eastern banks were placed for collection in the Los Angeles bank. The testimony of William Ladd, the bank repre-

sentative, supports that each of these items were for collection.

Defendant Warren (often referred to in the Record as Carter) testified [R. 1074]:

> "Well, our first conversation was that all the checks were to be made payable to Wake Development Company.
>
> Q. 'And how were they to be cleared?' A. 'Mr. Danziger said at that time that he had no means in New York to clear the checks, but that he would send them air mail to Los Angeles and deposit them in the account, or send them for collection through the Wake Development Company asking them to wire Fate, so that he could immediately draw the funds and have the funds rewired to New York so we could pay the salesmen and get our override on these sales.'"

The bank collection records indicate definitely that the latter alternative was adopted, that is, the checks were placed for collection.

Although not one of the checks specifically complained of by appellant, a seven thousand dollar check received from Elizabeth Parsons (victim named in Count XV) is treated in Warren's testimony. The method of handling this check illustrates the substantial difference between the facts in the *Kann v. United States* case and the facts in this case. After relating the circumstances of endorsement of the check [R. 1105], Warren testified:

> "Well, my best recollection is that I gave it to Mr. Danziger who agreed to send it by air mail to Los Angeles, California, for collection right away."

* * * * * * * *

[R. 1106]:

"The understanding was that this check would be collected through the Wake Development Company, and the proceeds would either be wired back to Mr. Danziger or to me.

"Q. By Mr. Lucas: 'Well, at any rate, did you participate in the proceeds of the check?'

"A. 'Yes, we did.'

"Q. 'How was that $7000.00 check divided?'

"A. 'As near as I can remember, this money was on a slightly reduced proportion to the regular one-third that went to Mr. Danziger. I think he took less than one-third of the $7000.00 due to the fact that I had explained to him that there were two men in the deal besides myself that had to be paid off in the deal, therefore I figured that under those circumstances he should bear a part of that pro rata expense in making the sale. And as near as I can remember, I think that Mr. Danziger got in the neighborhood of $1600.00 or $1700.00 out of this $7000.00.'"

Exhibit 92 is a transcript of proceedings before the Securities and Exchange Commission. In that testimony, as reflected in Exhibit 92 at page 196 thereof, appellant Danziger himself explained the handling of the checks thus:

"Q. 'Let's take an instance where Mr. Carmen made a sale of 100 shares of Trinidad stock.

'Now, what arrangements would he make with reference to that? How much would the purchaser be required to pay for that?'

"A. 'In money he would be required to pay $300.00 and a certificate for 100 shares of Great Eastern stock.'

"Q. 'Now when the check and stock was received by you, what did you do with the check?'

"A. 'I deposited it in Wake Development for clearance.

* * * * * * * *

'I would take the check over to the collection window and have them put it through for clearance; instead of depositing it direct to the account. I always put it through for clearance.

"Q. 'What was the purpose of that?'

"A. 'Because Mr. Carmen (one of Warren's aliases) was always very anxious to have his money and when we put it through for clearance, I could have them air mail it and wire Fate, whereas, if we deposited it in regular course, it would take ten days, whereas if we put it through for collection, I would get the answer back in two or three days.'

"Q. 'Once a check was cleared, how would you make the payment to Carmen.'

"A. 'I would have word from him as to where I was to send the check, whether it was to be a check or order, I was to wire the money. As a rule, I think in every case, the money was wired to him.'

"Q. 'And how much did you wire to Mr. Carmen on the sales of the 100 shares of Trinidad?'

"A. '$200.00 less the wiring costs.'

"Q. 'So that his commission was $200.00 out of every $300.00 cash realized?'

"A. 'That's right.' "

These facts are dissimilar to the *Kann* case.

It appears that there the checks were not mailed in the execution of the scheme. The Court in that case said (323 U. S. at 94):

> "The scheme in each case had reached fruition. The persons intended to receive the money had received it irrevocably."

The Court then distinguished the case from *United States v. Kenofskey,* 243 U. S. 440, a decision dealing with facts parallel in their ultimate analysis to those in this case where appellants carried on a long term scheme necessarily involving frequent systematic use of the bank in the planned *modus operandi.*

It should also be noted that the *Kann* case concerned a prosecution under the Mail Fraud Statute (Title 18, U. S. C. 338). This prosecution is under the Securities Act of 1933 (Title 15, U. S. C. 77q(a), which is broader in its prohibition, *i. e.,*

> "(a) It shall be unlawful for any person in the sale of any securities by use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly. * * *."

The following cases present varying examples of evidence deemed sufficient to meet the use of the mail requirements of the Mail Fraud Statute, Title 18, United States Code, Sec. 338. It should be borne in mind, however, that the first six Counts of the Indictment are drawn under the Securities Act which, as is above quoted, prohibits the use of the mails directly or indirectly in aid of the fraud, whereas the Mail Fraud Statute is somewhat less inclusive. Even under the older and more restricted

Statute, the use of the mails upon which the several substantive Counts are concerned, is sufficient.

United States v. Fleming, 18 Fed. 907;

Giles v. United States, 84 F. (2d) 943, 946 (C. C. A. 5, 1936);

Spear v. United States, 228 Fed. 485, 488 (C. C. A. 8, 1915); Rehearing den. Jan. 24, 1916;

Barnard v. United States, 16 F. (2d) 451, 453 (C. C. A. 9, 1926);

Greenbaum v. United States, 80 F. (2d) 113, 125 (C. C. A. 9, 1935) (reversed on other grounds);

Lonergan v. United States, 95 F. (2d) 642, 643 (C. C. A. 9, 1938).

In *Barnard v. United States,* 16 F. (2d) 451, this Honorable Court stated the following rule:

> "The contention that the testimony was insufficient as to certain counts is based upon the alleged insufficiency to prove the use of the mail to execute the scheme. But the evidence was ample to show that the letters in question passed through the mail, and that they were placed in the mail by the agents or clerks of some of the plaintiffs in error. The plaintiffs in error, therefore, caused the letters to be placed in the Post Office to be sent or delivered, within the meaning of the mail fraud statute. (Citing U. S. v. Kenofskey, 243 U. S. 440, 37 S. Ct. 438, 61 L. Ed. 836.)"

In *United States v. Fleming,* 18 Fed. 907, the Court said,

> "It is not necessary, in order to make out a case under the law, that the defendant shall be the inventor or originator of the scheme or artifice to de-

> fraud. * * * If a man adopts some old scheme which another devised and acts upon it, he has made it his own for the purposes of this act. It is also not necessary to show, in order to make out this offense, that the defendants actually, with their own hands, placed a letter or packet in a Post Office. If it appears from the proof that it was done through their agency or direction, by an employee or agent of the defendants, employed and directed for that purpose, it is enough."

In *Davis v. United States,* 55 F. (2d) pp. 550, 552 (C. C. A. 5),

> "It was not necessary to show that Davis had actually signed the letter or had personally deposited it in the mail. If it was mailed in furtherance of the scheme, in the usual course of business, and of this there could be no reasonable doubt, it was sufficient evidence to support the conviction."

The several checks pleaded in the Counts of the Indictment challenged by appellants on this ground have all been proved and are in evidence. As matched to the specific counts, they are:

Count	Exhibit
V	38
VI	59
XIII	29
XIV	13
XV	9

The dates of the several transactions cover a period between May, 1939, in the case of Count XIV to December 26, 1940, in the Count XV transaction: integrating these several check transmittals into the large, continuing fraudulent scheme disclosed by the whole evidence.

The Conspiracy Charged in the Indictment Is Properly Pleaded.

Appellants make the point that the conspiracy charged in the Indictment herein is duplicitous, disassociated, diverse and unrelated. Although the title of this argument in appellant's brief indicates that the attack is upon the sufficiency of the Indictment, the arguments advanced are almost entirely commentaries upon the evidence. The conspiracy count of the Indictment (Count XVII) is brief. The charging part is in the language of Title 18, Section 88, United States Code. It alleges that the conspiracy was one "to commit divers offenses against the United States, to-wit: the divers offenses charged against the said defendants in the divers preceding counts of this Indictment and made offenses by Sections 17(a)(1) and 5(a)(2) of the Securities Exchange Act of 1933, as amended (15 U. S. C. Sec. 77q(a)(1) and e(a)(2), and Section 215 of the Criminal Code (18 U. S. C. Sec. 338). There then follows a brief description of nine overt acts pleaded as committed in furtherance of the conspiracy. A lack in appellants' brief of any detailed argument as to the sufficiency of the pleading suggests that the attack is without merit in view of the well settled law epitomized in the following language from *Braverman v. United States,* 317 U. S. 49, at 54:

> "The allegation in a single count of a conspiracy to commit several crimes is not duplicitous, for 'The conspiracy is the crime, and that is one, however diverse its objects.' *Frohwerk v. United States,* 249 U. S. 204, 210; *Ford v. United States,* 273 U. S. 593, 602; *United States v. Manton,* 107 F. (2d) 834, 838. A conspiracy is not the commission of the crime which it contemplates, and neither violates

nor 'arises under' the statute whose violation is its object. *United States v. Rabinowich, supra,* 87-9; *United States v. McElvain,* 272 U. S. 633, 638; see *United States v. Hirsch,* 100 U. S. 33, 34, 35. Since the single continuing agreement, which is the conspiracy here, thus embraces its criminal objects, it differs from successive acts which violate a single penal statute and from a single act which violates two statutes. See *Blockburger v. United States,* 284 U. S. 299, 301-4; *Albrecht v. United States,* 273 U. S. 1, 11-12. The single agreement is the prohibited conspiracy, and however diverse its objects it violates but a single statute, §37 of the Criminal Code. * * *"

The Trial Court Did Not Err in Denying the Motion of Appellants to Dismiss the Indictment for Want of Prosecution, for a Continuance of the Trial, and to Quash the Return of Service on the Corporate Defendants nor in Appointing Counsel to Represent the Corporate Defendants.

Appellants' assignments and specifications of error grouped under Point V in their brief are directed primarily to the contention that the action of the trial court in each of the particulars assigned or specified as error resulted in the denial of appellants' right to receive "the kind of a trial secured to them by the Constitution of the United States" (App. Br. p. 118). This contention is wholly without substance. None of the matters assigned or specified taken singly, or considered as a group, can lead to the conclusion urged by appellants.

Appellant Danziger's motion for a dismissal of the Indictment for want of prosecution was based entirely upon the fact that his arraignment occured nearly three years after the return of the Indictment. This fact alone

is not sufficient to support such a motion, and appellants cite no authority in support of the proposition for which they contend.[4]

Indeed, it is settled that even the total absence of an arraignment is not a fatal defect in a criminal prosecution. An arraignment is not necessary for due process of law where the accused, as here, has had sufficient notice of the accusation and an adequate opportunity to defend himself. *Garland v. State of Washington,* 232 U. S. 642. Moreover, the right to a speedy trial guaranteed by the Sixth Amendment to the Constitution has consistently been held to establish the legal right of an accused *to demand* and to be accorded a trial as soon as the orderly conduct of the business of the court will permit. An accused complaining of unreasonable delay must affirmatively demand to be tried. Thus, in *Worthington v. United States,* 1 F. (2d) 154 (C. C. A. 7, 1924) cert. den. 266 U. S. 626, a period of more than six years intervened between the date of the return of the indictment and the time a plea was entered. The defendants sought a dismissal of the indictment alleging that the United States had for more than a reasonable time, namely, eight years, failed, neglected, and omitted to bring the defendants to trial, and failed in any way during said period to prosecute the cause, and claiming that their right to a speedy trial under the Sixth Amendment to the Con-

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[4]*United States v. Henning,* 15 F. (2d) 760 (C. C. A. 9, 1926), cited by appellants (App. Br. p. 119), supports the position of appellee herein rather than that of appellants. The motion there was to dismiss or set for trial thus indicating the necessity of a demand for trial. This Court denied the petition to set for trial as it appeared that appellant there would shortly receive the trial sought.

stitution had been violated. The Government's demurrer to this motion was sustained and, on appeal, the trial court's action in thus sustaining the Government's demurrer was affirmed, the Court declaring (p. 154):

> "The record fails to show a single effort made by defendant, or any other defendant, to avail himself of a speedy trial. No facts were pleaded bringing the case within the rule requiring a speedy trial, *i. e.,* that the defendant was incarcerated, or, being at large, had appeared in open court demanding trial, or otherwise. *Defendant's sole reliance was upon the bare fact that the case had not been prosecuted. If the defendant desired a speedy trial, it was his duty to ask for it* and we must assume that it would have been granted had he made any effort to procure it. *His long and uninterrupted acquiescence in the delay bars his right to complain.*" (Emphasis ours.)

In the instant case the record is silent on any attempt by appellant Danziger, or any of the appellants, to obtain an earlier trial. Here, as in the *Worthington* case, appellant Danziger relies solely upon the bare fact that the case had not been prosecuted. And for the reasons there stated that fact alone, without any affirmative conduct on his part directed toward securing a speedy trial, was insufficient to warrant a dismissal of the indictment for want of prosecution. In his affidavit in support of the motion to dismiss indictment for want of prosecution, appellant Danziger asserts that he is an attorney at law. He further alleges in the affidavit that "affiant from the inception of the proceedings culminating from the filing of the within Indictment recognized that no conduct on his part in connection with any of the matters referred

to in the within Indictment could legitimately form the basis of any criminal proceeding against him and, therefore, assumed that the prosecution of said cause as against affiant was not pressed because of an unwillingness on the part of the United States Attorney's Office to proceed with the cause as against him." To engage in assumptions of that nature rather than appear before the Court and move for relief, is to merely hope without taking action required of one who seeks to avoid prosecution. Although true in the case of any defendant, this is emphatically so as to an attorney at law. Furthermore, the Record discloses a meritorious reason why the case was not brought to trial at an early date. It arose without contradiction [testimony of Warren, R. 1263] that the defendant Willard Eugene Warren was not apprehended until October 20, 1944, in New York City and that prior to that date he had not indicated to anyone his disposition to appear and face trial. It is apparent from a reading of the entire Record that the trial of the case was a long one, considerably involved, and that it was most appropriate to place appellant Danziger, the two Corporations, and defendant Warren on trial at the same time. The arraignment of appellant Danziger occurred November 20, 1944, just one month after the apprehension of his principal co-defendant. Under these circumstances a valid practical reason for deferring the arraignment of appellant Danziger is readily apparent. Had he sought to invite the Court to exercise its discretion on the question of whether he should be kept under an untried indictment during the search for his co-defendant, this appellant could readily have done so; but he did not invite the Court to act then and he cannot appropriately

complain now of a delay which was sufficiently comfortable to himself that he was content to maintain the *status quo*.[5]

Nor did the trial court err in refusing appellant Danziger's application for a continuance. It is an elementary principle of law that granting or refusing a request for a continuance rests within the sound discretion of the trial court. *Hardy v. United States,* 186 U. S. 224; *Brady v. United States,* 26 F. (2d) 400, 403 (C. C. A. 9, 1928) cert. den. 278 U. S. 621; *Crono v. U. S.,* 59 F. (2d) 339, 341 (C. C. A. 9, 1932). In *Crumpton v. United States,* 138 U. S. 361, one of the cases cited by appellants, the Supreme Court in sustaining the exercise of the trial court's discretion with respect to the granting of a continuance goes on to say that (p. 365):

> "It is clear that the ruling of the court is not subject to review."

The Record in this case shows no abuse of discretion by the trial court nor any prejudice to appellant Danziger, or any of the appellants, in the refusal to grant the continuance requested. As a matter of fact the Court below was alert to the possibility of prejudice to the defendants [R. 383-6] and presumably found none for the Record contains no further reference to any such prejudice after the commencement of the trial. Nor, significantly, was there any reference by appellants at any time

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[5]It also appears in the Record that at the time of trial defendants John J. L. Callahan and W. W. Wright had not been apprehended. Callahan was known to be in the Army and the case was dismissed as to him. As to defendant Wright, Government Counsel stated that he had never been contacted and the Government had no feeling that his whereabouts would even be known.

during the trial that their defense had in any way been adversely affected by the denial of the motion for a continuance.

Further, examination of the affidavit filed by appellant Danziger in support of the motion for a continuance, and a reading of the Record in the instant case in conjunction therewith, reinforces the conclusion that no abuse of discretion occurred. As the Supreme Court said in *Isaacs v. United States,* 159 U. S. 487, 489 (1895):

> "That the action of the trial court upon an application for a continuance is purely a matter of discretion and not subject to review by this court, unless it be clearly shown that such discretion has been abused, is settled by too many authorities to be now open to question. (Citing cases.)
>
> ". . . The affidavit did not show that the defendant could not make the same proof by other witnesses or that he could not safely go to trial without the testimony of the witnesses in question. In fact, all the affidavit showed that the witness could prove was established by other testimony, including that of the defendant himself. There was clearly no abuse of discretion."

Corporate appellants' claim that the Court below erred in failing to quash the return of service on said corporations requires less attention and finds its refutation in the Record itself. Appellants argue (App. Br. p. 121) that:

> "The record herein reflects that no evidence of any nature was presented to show that at the time of trial any officer of the corporation had been served or was present in court."

To this there are several answers. The marshal's return states that the summons for the corporate defendants was left with Danziger's secretary and that Danziger was authorized to accept legal service on behalf of said corporations [R. 79, 81]. It is plain that there being no specific statutory provision covering the manner in which jurisdiction was to be obtained over the corporate defendants, the Court "had the right to resort to any appropriate method for that purpose." (*U. S. v. John Kelso Co.,* 86 Fed. 304, 308 (N. D. Cal. 1898).) The service employed in the instant case was plainly appropriate. To say, as appellants do, that the Record contains no evidence that the corporate defendants were present in Court ignores the fact that corporations appear in legal proceedings only by their attorney. *Acme Poultry Corporation v. United States,* 146 F. (2d) 738, 740 (C. C. A. 4, 1944) cert. den. 324 U. S. 860. The corporate defendants in the instant case were represented by counsel throughout the trial. If such representation was unauthorized the burden rested upon those defendants to establish such lack of authority. *Acme Poultry Corporation v. United States, supra.* Appellants seek to place upon the Government the burden of establishing the regularity of the service upon the corporate defendants. The reverse is the rule. The truthfulness and regularity of the officer's return is presumed and it is the obligation of the party seeking to invalidate or impeach the service to make a sufficient showing for that purpose. 3 *Cyc. of Fed. Proc.* 407. The Record is barren of any evidence whatever introduced or offered by appellants to impeach or invalidate the service. No such showing of any character was attempted or made.

Corporate appellants urge that they were deprived of a trial by jury in that such trial had not been properly waived. This contention is linked with that just considered and, like that contention, is dissipated upon an examination of the Record [R. 393-4]. Corporate appellants were represented by counsel who waived a trial by jury on their behalf. Further, in Exhibit 92, Danziger's testimony before the Securities and Exchange Commission, he acknowledged personal management of both corporate defendants. That corporate defendants appear by attorney and are bound by the conduct of such counsel has already been adverted to. *Acme Poultry Corporation v. United States, supra.*

Appellants' final argument is that the trial court erred in appointing Danziger's attorney to act as counsel for the corporate defendants. Appellants rely entirely upon *Glasser v. United States*, 315 U. S. 60 (1942). There the appointment of counsel to represent other defendants was made over the objection of the defendant who had originally employed the attorney in question; there was a direct conflict of interest involved and this conflict was shown in the Record. Specific matters were pointed to by the appellant in the *Glasser* case as demonstrating the conflict of interest which existed and the prejudice which followed the Court's appointment of counsel. The Supreme Court examined the portions of the Record referred to and concluded that they indicated a prejudicial conflict of interest which should have been avoided.

None of these factors are present in the instant case. The appointment by the trial court of Danziger's counsel to represent the corporate defendants was expressly made subject to the development during the trial of any conflict of interest between the individual and corporate de-

fendants [R. 338]. No such conflict developed and none was mentioned or referred to either by the trial court or by any of the defendants. Nor do appellants refer to any specific part or aspect of the proceeding, as in the *Glasser* case, to show any divergence of interest between appellant Danziger and appellants Trinidad International Petroleum, Ltd., and Wake Development Company. No conflict of interest being shown, and no prejudice to any of the defendants having resulted, the appointment of counsel complained of cannot serve as a basis for reversal of the convictions obtained. It is noted that the corporate defendants were sufficiently satisfied with counsel's representation at the trial that they have selected him to represent them in this appeal.

It is evident, we submit, from the foregoing, that none of the matters assigned or specified as error by appellants are well taken and that the trial court acted properly on each of the points of which appellants complain.

Conclusion.

It is respectfully submitted that the Record abounds in substantial and adequate evidence of the guilt of the defendants on all Counts of the Indictment and that it is free from error.

Respectfully submitted,

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